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Filing date: **10/06/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92059305
Party	Plaintiff MWR Holdings, LLC
Correspondence Address	WILLIAM W STROEVER GREENBERG TRAURIG LLP 200 PARK AVENUE, PO BOX 677 FLORHAM PARK, NJ 07932-0677 UNITED STATES stroeverw@gtlaw.com, ameliom@gtlaw.com, njdocket@gtlaw.com
Submission	Motion for Summary Judgment
Filer's Name	William W. Stroever
Filer's e-mail	stroeverw@gtlaw.com, ameliom@gtlaw.com, njdocket@gtlaw.com
Signature	/William W. Stroever/
Date	10/06/2015
Attachments	Petitioner Reply in Support of Motion for Summary Judgment.pdf(2662988 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

MWR HOLDINGS, LLC,

Petitioner,

v.

THEODORE A. STONER,

Registrant.

Cancellation No. 92059305

Mark: BONGO BI-LINGO BUDDY

Reg. No.: 3,700,403

Registered: October 20, 2009

**PETITIONER’S REPLY IN FURTHER SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT**

In his attempt to show use of his trademark prior to its registration date, Registrant Theodore A. Stoner’s (“Stoner”) asks the Trademark Trial and Appeal Board to essentially create the existence of a business based on attorney argument and speculation. Despite allegedly operating a business advertising and selling the services listed in U.S. Reg. No. 3,700,403 (the “403 Registration”) for the past eleven years, Stoner has been unable to come forward with a single document substantiating that use – i.e., advertising or sale of his BONGO BI-LINGO BUDDY mark in connection with the services listed in the ‘403 Registration (the “403 Services”) prior to the October 20, 2009 registration date of the ‘403 Registration. This complete lack of evidence of any kind fails create a genuine issue of material fact as to the nonuse of Stoner’s mark, and for that reason the Board should grant Petitioner MWR Holdings, LLC’s (“Petitioner”) motion for summary judgment.¹

¹ The instant reply is directed to Petitioner’s Motion for Summary Judgment. Per the TTAB rules, Petitioner will respond to Stoner’s Cross-Motion for Summary Judgment within the appropriate time frame.

Stoner's opposition to Petitioner's motion for summary judgment is unaccompanied by any evidence of any evidentiary value to this proceeding. The opposition consists primarily of attorney argument, which is no substitute for actual evidence and should certainly not carry the day. *See Enzo Biochem, Inc. v. Gen-Probe Inc.*, 424 F.3d 1276, 1284 (Fed. Cir. 2005). Stoner also attempts to introduce evidence for the Board's consideration, but fails to submit that purported evidence with an affidavit or declaration as required by the Federal and TTAB rules. *See, e.g.*, TBMP § 528.05(a), 528.05(b). This "evidence" need not even be considered by the Board. However, even considering these documents on their face in the context of this motion, they fail to establish what Stoner thinks they establish, and they fail to raise a genuine issue of material fact.

ARGUMENT

"Summary judgment is proper, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case In such a situation, there can be no genuine issue as to any material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). In this case Stoner has failed to come forward with any evidence to raise a genuine issue of material fact as to the nonuse of his mark prior to its registration date. Rather, Stoner has tried to survive summary judgment with conclusory allegations and attorney argument, neither of which is a substitute for actual evidence, and neither of which will overcome a motion for summary judgment. *See, Ferring B.V. v. Barr Lab.*, 437 F.3d 1181, 1193 (Fed. Cir. 2006) ("Conclusory allegations and attorney arguments are insufficient to overcome a motion for summary judgment."); *Enzo Biochem*, 424 F.3d at 1284 ("Attorney argument is no substitute for evidence"); *Glaverbel Societe Anonyme v. Northlake Mktg. & Supply, Inc.*, 45 F.3d 1550, 1562 (Fed. Cir. 1995) ("There

must be sufficient substance, other than attorney argument, to show that the issue requires trial.”). Stoner has not made of record any document that shows that he used the BONGO BILINGO BUDDY mark in commerce in connection with the ‘403 Services before his registration date.

1. Petitioner has made a prima facie case of non-use prior to the registration date of the ‘403 Registration.

As an initial matter, Petitioner has come forward with a *prima facie* showing sufficient to shift the burden of production to Stoner. Among other things, Petitioner has proffered: Stoner’s admitted lack of any sales for the ‘403 Services (Registrant’s Motion for Summary Judgment, Exh. D at pp. 2-3); Stoner’s admission that the ‘403 Services are used only to promote his other goods (*id.*); and Stoner’s failure to produce any documents showing use of the ‘403 Registration in commerce prior to the registration date of the ‘403 Registration. Petitioner’s evidence is consistent with the evidence in prior TTAB cases made by summary judgment movants. For example, in *The Clorox Company v. Hermilo Tamez Salazar*, 108 USPQ2d 1083 (TTAB 2013), an opposer moved for summary judgment of a lack of bona fide use prior to filing on the basis of discovery responses and a declared statement by the applicant. The TTAB found that the opposer had made a *prima facie* case of nonuse. *Id.* Similarly, in *Meundies, Inc. v. Drew Massey dba Myundies Inc.*, 2014 WL 4219121, *2-3 (TTAB August 13, 2014), the petitioner sought cancellation based on interrogatory and document request responses. Petitioner’s case here is consistent with the amounts of evidence that the TTAB has previously found to be a *prima facie* case. Petitioner’s showing is similarly strong in light of the fact that in order to make its case it is required to prove a negative for which any evidence is in the possession of Stoner. *See Piedmont and Arlington Life-Ins. Co. v. Ewing*, 92 US 377, 380 (1875) (“While it may be easy enough to prove the affirmative of [a] question[], it is next to impossible to prove the negative.”); *Martal*

Cosmetics, Ltd. v. Int'l Beauty Exch. Inc., 2007 WL 895697, *27 (E.D.N.Y. March 22, 2007) (noting that “where the resolution of a claim requires the movant to prove a negative fact, the burden shifts to the non-movant.”).

Finally, Petitioner notes that Stoner has not disputed Petitioner’s standing to bring this Motion for Summary Judgment. As the record in this case makes clear, Petitioner’s pending trademark application was refused registration based on Stoner’s ‘403 Registration (see office action and response attached to Stoner’s opposition as Exhibit 21, P00123 – P00150), which confers standing upon Petitioner to bring this cancellation proceeding and this motion.

2. Stoner has not used the BONGO BI-LINGO BUDDY mark in the sale or advertising of the ‘403 Services prior to registration.

In response to Petitioner’s *prima facie* showing that Stoner has failed to use the BONGO BI-LINGO BUDDY mark in the sale or advertising of the ‘403 Services prior to his registration date, Stoner has failed to come forward with any actual evidence of such sale or advertising. Stoner has pointed to several documents in its document production, as well as his self-serving, conclusory interrogatory responses. As mentioned above, the Board need not even consider these documents as they are not properly before the Board as evidence – having not been properly introduced with an authenticating affidavit as required by the rules. However, as set out more fully below, none of this material (even if properly made of record) would allow a reasonable fact-finder to decide that Stoner had used its mark with the relevant services prior to his registration date.

Two of the documents Stoner brings to the Board’s attention are documents 000107 and 000110 of Stoner’s document production (attached hereto as Exhibit F)². Significantly, however,

² For the convenience of the Board and the sake of clarity, Petitioner has continued the exhibit numbering from its opening brief.

these documents *contain no dates*. Without any way of knowing when the documents were created, these documents cannot serve as evidence that Stoner was using or advertising its mark prior to the registration date³. Indeed, had these documents actually been created prior to the registration date, it would have been a mere formality for Stoner to include a declaration as to when these documents were created, or even make a statement in the motion as to when they were created. The fact that he did not include such a declaration, or introduce the documents through a declaration, is itself evidence that the documents were created after the registration date. Nor is it a justifiable inference for the Board to infer a date for these documents out of whole cloth when the creation date could just as easily be after registration as before. There is no way for a reasonable fact finder to look at these documents and determine whether Stoner's BONGO-BI-LINGO BUDDY mark was used in connection with the relevant services prior to the registration date, and they therefore do not create a factual dispute.

Another document proffered by Stoner to demonstrate his purported advertisement of the mark in connection with the '403 Services is document 000109 of Stoner's document production (attached hereto as Exhibit G). Stoner contends that this document reveals that he advertised the '403 Services prior to his registration. However, nowhere in this document does it even make mention of the '403 Services. In fact, the document explicitly lists "product categories available for licensing" by Stoner, and the '403 Services are not included in that list. Even properly made of record, this document cannot serve as evidence that Stoner was using the '403 Services prior to his registration date. If anything, document 000109 is evidence that Stoner was *not* using the '403 Services as of June 10, 2004 because he does not list the '403 Services.

³ Petitioner notes that document number 000110 contains a copyright date of 1999 for the image of a cat, but Stoner has not alleged use of his BONGO BI-LINGO BUDDY mark until 2004 so this cannot be the date of the document as a whole.

Similarly, Stoner points to document 000111 of his document production (attached hereto as Exhibit H) to show advertisement of the ‘403 Services, and yet this document uses neither the mark BONGO BI-LINGO BUDDY nor makes any mention of the ‘403 Services. Clearly, this document does not serve as evidence that Stoner was using the BONGO BI-LINGO BUDDY mark in connection with the ‘403 Services prior to the registration date, or evidence of any fact relevant to this proceeding.

Finally, Stoner offers his own interrogatory response to attempt to create a genuine issue of material fact, in which Stoner states in a conclusory manner that he has advertised the ‘403 Registration in connection with his goods and services (attached hereto as Exhibit I). Notably, the response contains no specifics as to whether Stoner was allegedly conducting these activities prior to the registration date, and it does not specify whether the advertising was done for the ‘403 Services. Even more importantly, Stoner’s interrogatory response is unaccompanied by any supporting factual evidence to create a genuine issue of material fact. *See Carter v. Clark County*, 459 Fed. Appx. 635, 636 (9th Cir. 2011) (refusing to find a genuine issue on summary judgment where the only evidence submitted by the non-movant was “his vague, conclusory answers to [the movant’s] interrogatories”, deeming the responses uncorroborated and self-serving). Rather, Stoner is hoping that the mere statement that he uses the BONGO BI-LINGO BUDDY mark will be enough to survive summary judgment. None of this material is evidence that a reasonable fact-finder could use to rule in favor of Stoner on this issue, and the Board should grant Petitioner’s Motion for Summary Judgment. *See Opryland USA Inc. v. Great Am. Music Show, Inc.*, 970 F.2d 847 (Fed. Cir. 1992) (“A factual dispute is genuine if, on the evidence of record, a reasonable fact finder could resolve the matter in favor of the non-moving party.”).

3. Stoner has not engaged in commerce with the BONGO BI-LINGO BUDDY mark for the ‘403 Services prior to the registration date.

Stoner’s argument that he has engaged in commerce with the BONGO BI-LINGO BUDDY mark in connection with the ‘403 Services similarly fails due to a lack of any evidence to support his case. Just like the applicant in *The Clorox Company*, Stoner argues that his discovery responses are not what they appear to be, and that they are being taken out of context. 108 USPQ2d 1083. However, just like the applicant in *The Clorox Company*, Stoner has failed to come forward with any evidence to even suggest otherwise, or to provide context for those statements. *Id.*

Stoner argues that an article he produced as document number 000068-000070 (attached hereto as Exhibit J) demonstrates that he has rendered the ‘403 Services in commerce. However, the only reference of any kind made to Stoner in this article is a portion of one sentence: “...and Bongo Cats were dancing around the show floor (or was that us every time we heard their salsa beat?)” This “evidence” does not even mention the BONGO BI-LINGO BUDDY mark, does not mention any services of any kind being provided by Stoner, and provides no information of any kind to support the claim that Stoner was using the mark in commerce. Again, even if this document was properly made of record, it establishes no fact of any relevance to this case, much less a genuine issue of fact.

Stoner’s only remaining alleged evidence is a set of two pictures, produced as document numbers 000085 and 000086 (attached hereto as Exhibit K). The documents were not submitted with any affidavit to provide any context for the pictures. They also contain no dates that might show that they pertain to activities taken prior to the registration date. In short, these pictures have no evidentiary value of any kind in the context of this summary judgment motion.

Stoner has failed to put forward even one page of evidence showing that he used the BONGO BI-LINGO BUDDY mark as a trademark with the ‘403 Services prior to his registration date. For a business alleging use of its mark in the ordinary course for many years, it is surprising and illuminating that Stoner does not have a single invoice, or receipt, or event program, or any other similar document from prior to his registration date. It is equally surprising that Stoner could not provide a declaration – from himself or even one of his alleged customers – attesting to some relevant facts or providing context for his purported “evidence”. If Stoner’s alleged use was anything more than use made to reserve a mark, he would have had some of this evidence available. The inescapable conclusion from this overwhelming scarcity of evidence is that Stoner did not make use of the BONGO BI-LINGO BUDDY mark in connection with the ‘403 Services prior to his registration date. Stoner has not created a genuine issue of material fact to suggest otherwise, and the Board should grant Petitioner’s motion for summary judgment.

CONCLUSION

For the foregoing reasons, Petitioner respectfully submits that there is no genuine dispute of material fact, and that Petitioner is entitled to judgment as a matter of law that Stoner has failed to meet the requirements of 15 U.S.C. § 1127 with respect to the ‘403 Registration. Accordingly, the ‘403 Registration should be cancelled as *void ab initio*.


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Dated: October 6, 2015

GREENBERG TRAURIG, LLP

By: 
William W. Stroeve
200 Park Avenue
P.O. Box 677
Florham Park, NJ 07932-0677
Tel. 973-443-3524
Fax 973-295-1291
stroeve@gtlaw.com

Attorneys for Petitioner
MWR Holdings, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing PETITIONER'S REPLY IN FURTHER SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT has been served on Theodore A. Stoner by mailing said copy on October 6, 2015, via First Class Mail, postage prepaid to:

Matthew H. Swyers
The Trademark Company PLLC
344 Maple Ave. W, Suite 151
Vienna, VA 22180

A handwritten signature in black ink, appearing to read 'W. Stroeve', is written over a horizontal line.

William W. Stroeve

EXHIBIT F



“Will you be my Bi-Lingo Buddy?”

**The Children’s Museum: Friday, 12PM TO
3PM for a *Caribbean Bi-Lingual Adventure*
theatrical performances, Bi-Lingo matching
game, coloring and facepainting!**

**Join Bongo and his friends on an island hopping
bilingual language learning adventure
around Bi-Lingo Bay!**



Winter Park Public Library

Thursday at 10:30 AM

**460 E. New England Ave.
Winter Park, FL 32789**

000110

EXHIBIT G

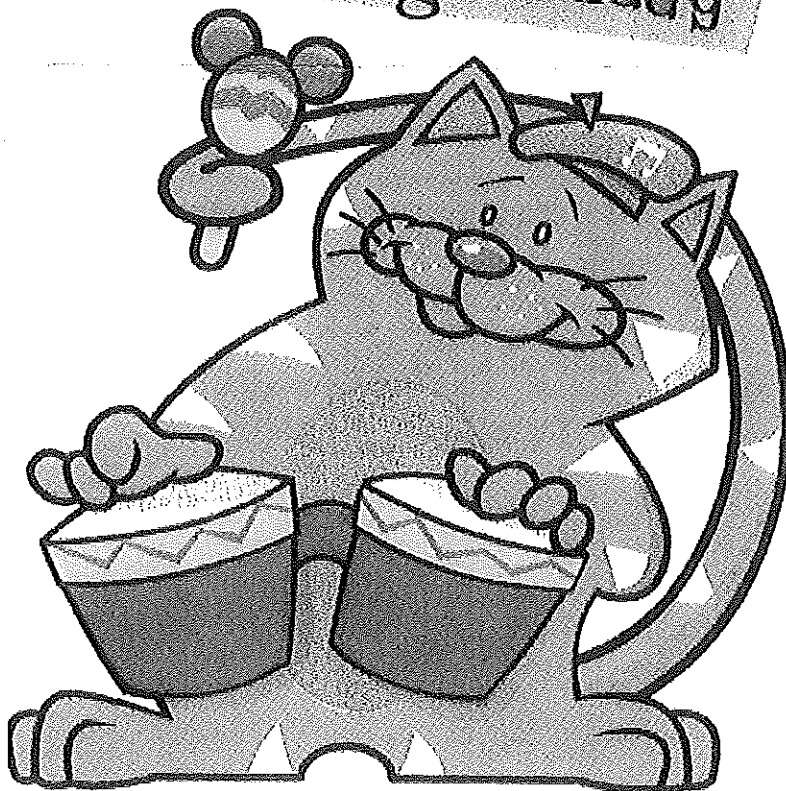
License!

Show Daily

June 10, 2004
DAY 3

Show Daily

BONGO Bi-Lingo Buddy



Bilingual Buddy

Bongo Cats, Inc. art property, Bongo Bi-Lingo Buddy, was born in 1998. Travel with Bongo (and 1 Maraca) in his dreams... from BongoCats orphanage to reunite with his homeland, Banana Isle. On your island-hopping adventure around BiLingo Bay you encounter several bilingual subjects (English/Spanish). Product categories available for licensing include: games (computer, video, board, flashcards, electric handheld), books (reading plush, electronic, interactive, audio), plush (toys, dolls, electronic, interactive, audio), clothing (t-shirts, sweaters, jackets, pajamas, headwear), musical toy instruments (bongos, infant rattles), visual arts (TV, film), and DVDs.

BOOTH # 4467

(Article in June 10, 2004,
LICENSE! SHOW DAILY)

000109

EXHIBIT H

the

TOY BOOK

Vol. 24, No. 6 September 2008

SERVING THE GLOBAL MARKET

Playing Online and on Line at the Store

Companies Strike the Balance Between the Real and Virtual Worlds

Web -INTERACTIVE

Manhattan Toy also realizes the importance of taking kids offline for face-to-face social interaction and encourages this with Groovy Girls RSVP.

"The good thing about Groovy Girls is that it's still a doll line and we want to encourage girls to play not just online," says Manhattan Toy's Klein.

Companies that provide gentle reminders to spend time away from the computer screen will surely be popular among parents, who may have concerns about the effect web play has on their children.

"If managed properly, web play can be used as a tool for learning, developing technological skills, expanding a child's worldview, and increasing awareness of issues," says Nakamura. "Conversely, if site creators and parents fail to limit time spent on the computer or the content that can be accessed, online play can become detrimental as kids spend too much time on activities that hamper growth and development of positive attributes."

With the ever-expanding genre of web-based play

and the growing concern of the effect it has on children, companies are hurrying to keep up with the trend as well as make online play parent-friendly. So, what's next for the world of web play?

"I don't think that kids are expecting to see all of the fun stuff while only being tethered to their computers. I think it's something they want to take with them. Portability is important," says Nickelodeon's Brodsky.

Techno Source's McCormick also believes that kids will expect to see the technology and related fun in places other than the computer. "We know this demographic is incredibly capable of multi-tasking at any point in time. So I think you're going to see them expect the technology to evolve so they can take the content with them in any form."

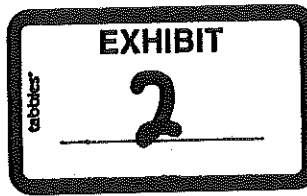
Meeting and exceeding the expectations of kids and their parents has long been a goal of toy manufacturers. As kids spend more and more of their free time online, success will come to those whose products engage kids both online and on the go.



Bongo Cats introduces Bi-Lingo Bay, where Bongo invites kids on a bilingual Caribbean adventure. Kids can help Bongo the cat on his adventure back to his home, Banana Isle, where he can reunite and celebrate with his family. At www.Bi-Lingo.com, kids play bilingual games to help Bongo along, but they have to watch out for grumpy music-hating Huracan.

www.toybook.com/search

EXHIBIT I



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board**

In the matter of U.S. Registration 3,700,403
For the mark BONGO BI-LINGO BUDDY
Registered on the Principal Register on October 20, 2009

MWR Holdings, LLC,

Petitioner,

vs.

Stoner, Theodore A.,

Registrant.

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Cancellation No. 92059305

**REGISTRANT'S ANSWERS AND OBJECTIONS TO
PETITIONER'S FIRST SET OF INTERROGATORIES**

TO: MWR HOLDINGS, LLC c/o William W. Stroeever, Greenberg Traurig, LLP, 200
Park Ave, Florham Park, NJ 07932.

FROM: THEODORE A. STONER c/o Matthew H. Swyers, Esq., The Trademark
Company, PLLC, 344 Maple Avenue West, PBM 151, Vienna, VA 22180.

COMES NOW the Registrant Theodore A. Stoner (hereinafter "Registrant") and provides the
instant Answers to Petitioner MWR Holdings, LLC's (hereinafter "Petitioner") First Set of
Interrogatories providing as follows:

INTERROGATORIES

INTERROGATORY NO. 1:

Identify each individual involved on behalf of Registrant in the provision of services under Registrant's
Mark.

ANSWER: Theodore A. Stoner
127 West Fairbanks Ave, #492
Winter Park, FL 32789

INTERROGATORY NO. 2:

Describe in detail the circumstances surrounding Registrant's alleged first use of Registrant's Mark anywhere, which purportedly occurred on June 8, 2004.

ANSWER: Registrant first used Registrant's Mark at a New York trade show where Registrant performed a live performance under Registrant's Mark.

INTERROGATORY NO. 3:

Describe in detail the circumstances surrounding Registrant's alleged first use of Registrant's Mark in commerce, which purportedly occurred on June 18, 2008.

ANSWER: Upon further review Registrant first used Registrant's Mark in interstate commerce at the New York trade show that took place on June 8, 2004 where Registrant first performed the show outside of Colorado.

INTERROGATORY NO. 4:

Identify each individual who participated in the creation and adoption of Registrant's Mark.

ANSWER: Theodore A. Stoner
127 West Fairbanks Ave, #492
Winter Park, FL 32789

INTERROGATORY NO. 5:

For each month from Registrant's date of first use of Registrant's Mark until the present, state the sales volume of services provided by Registrant under Registrant's Mark.

ANSWER: Registrant does not have any sales figures relating to Registrant's Services at issue in this proceeding as the International Class 41 services are offered to promote Registrant's Mark in connection with Registrant's other goods.

INTERROGATORY NO. 6:

Describe the target class of consumers to whom Registrant provides Registrant's Services.

ANSWER: Registrant targets children ages 3 to 6.

INTERROGATORY NO. 7:

Identify the date Registrant first became aware of Petitioner's use of Petitioner's Mark in the United States.

ANSWER: Registrant first became aware of Petitioner's use of Petitioner's Mark in the United States when Petitioner filed the instant Cancellation Proceeding on June 5, 2014.

INTERROGATORY NO. 8:

Describe with particularity all advertising conducted by Registrant relating to Registrant's Mark.

ANSWER: Registrant has advertised Registrant's Mark through Registrant's websites, social media accounts, personal sales and live shows to various children's institutions, public relations articles, and live trade shows.

INTERROGATORY NO. 9:

For each year since Registrant's date of first use of Registrant's Mark until the present, state the annual advertising and promotion expenditures in the United States for Registrant's Services.

ANSWER: Registrant has spent about \$5,000 average annually since first beginning to use Registrant's Mark in advertising and promotion expenditures.

INTERROGATORY NO. 10:

State all facts upon which Registrant intends to rely to prove that there is no likelihood of confusion between Registrant's Mark and Petitioner's Mark.

ANSWER: Applicant objects to the instant request on the grounds that it is overly broad and burdensome given the inclusion of the term "All" and that it calls for information protected by the attorney client privilege and / or work product doctrine.

Respectfully submitted this 11th day of March, 2015.

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/
Matthew H. Swyers, Esq.
344 Maple Avenue West, Suite 151
Vienna, VA 22180
Tel. (800) 906-8626
Facsimile (270) 477-4574
mswyers@TheTrademarkCompany.com
Counsel for Registrant

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board

In the matter of U.S. Registration 3,700,403
For the mark BONGO BI-LINGO BUDDY
Registered on the Principal Register on October 20, 2009

MWR Holdings, LLC,	:	
	:	
Petitioner,	:	
	:	
vs.	:	Cancellation No. 92059305
	:	
Stoner, Theodore A.,	:	
	:	
Registrant.	:	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a copy of the foregoing this 11th day of March, 2015,
to be served, via first class mail, postage prepaid, upon:

William W. Stroeve
Greenberg Traurig, LLP
200 Park Ave
Florham Park, NJ 07932

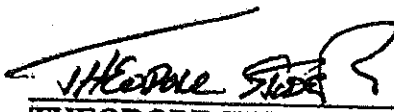
/Matthew H. Swyers/
Matthew H. Swyers

THEODORE STONER

COUNTY OF Orange

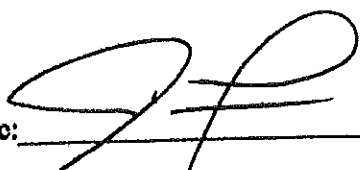
STATE OF Florida

BEFORE ME, the undersigned authority, this 10 day of March 2015, personally appeared Mr. Theodore Stoner, who after being first duly sworn, states that he is the person who assisted and provided the answers to Registrant's Answers and Objections to Petitioner's First Set of Interrogatories and that the answers provided therein are true and correct, and who is personally known to me or who has produced FUDL as identification and who did take an oath.


THEODORE STONER

3/10/15'

Date

Notary Public:  (signature)

Notary Public: James Franzese (Typed/Printed name of Notary Public)

Commission No. _____

My Commission Expires: 1/8/2018

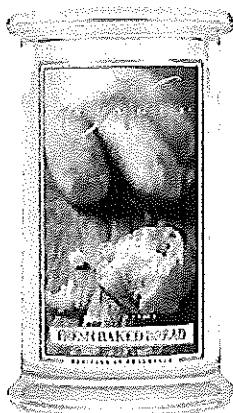


James Franzese
Notary Public
State of Florida

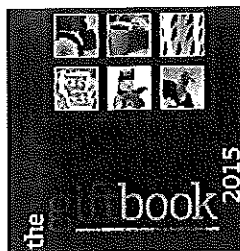
MY COMMISSION # FF 81828
Expires: January 8, 2018

EXHIBIT J

NEW for 2015



KRINGLE
CANDLE®
www.kringlecandle.com



Advertisement

Licensing Show roundup

Playthings Staff -- Gifts & Dec, June 14, 2004

NEW YORK — If anyone had any doubts about the health (or wealth) of the licensing industry, doubt no more.

By all accounts and reports, last week's International Licensing 2004 proved that the industry is alive and well, with enough creative energy to carry most, if not all, categories.

With a host of anniversaries upcoming, childhood icons are passing middle age and could actually begin collecting Social Security if they were, um...uhh...real. (You know, really, real.)

"Pat the Bunny" is approaching 65 years old; Mickey, 75. Thomas the Tank Engine, can you believe, is coming up to his big six OH. And all of them are still performing well at retail. (Well...we suppose of rock 'n' roll icons approaching their twilight years can still pack them in, so can toy icons.)

Savvy toy retailers might consider some merchandising "events" centered around these birthdays.

Speaking of Mickey, Disney is planning a holiday 2004 exclusive with Wal-Mart. Mambo Mickey — made with that incredibly soft Balboa plush — is being developed in-house by Disney.

Compared to the others, the Indomitable Pink Panther is barely in mid-life. No crisis, however; there are big plans underway for MGM's pink wonder, including a new movie next year starring Steve Martin, who signed a two-pix deal with the studio. In addition, the feline brand will "cross over" into juvenile products, including sleep, bath, meal and play.

And speaking of play, plans are in the negotiating stage for a Build-a-Bear Workshop right in the heart of Manhattan's prime shopping district, Fifth Avenue. Although "Chief Executive Bear" Maxine Clark could not divulge the possible location, she did tell playthings.com that the store would be open in a year.

Like all the workshops — 157 in the United States and Canada — the New York City location will be what Clark calls a "retail entertainment" venue.

Who can argue with success? In a short six years, 20 million stuffed "friends" have been created at the workshops.

— Maria Welskott

FDNY was in plain presence at the show. Fire Zone director of licensing Marjorie Morris says a deal is just about ready to be inked with Corgi Classics to produce a die-cast line of FDNY vehicles. The license is owned by the FDNY Fire Safety Education Fund.

Tom the Tractor is getting close to a home video deal, probably signed within the next 30 days, says The Wildflower Group's Michael Carlisle. Tom is also currently being pitched for TV, he says.

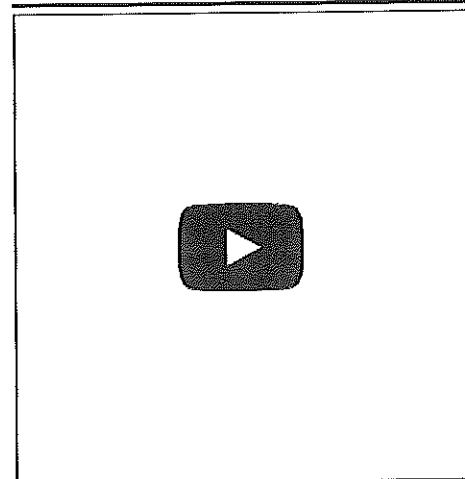
You already know da boyz. Now get to know the boys N the woods. Sony is prepping the release of the full-length CGI "Open Season" in '06 and is casting about for licensees for the feature starring a grizzly bear (Boo, Martin Lawrence) and a one-antlered muledeer (Elliot, Ashton Kutcher). Very goofy.

Baby Gund is expanding further into plush, giftware and, yes, even jewelry. Carlisle says the category is growing sharply (yes, really) and represents a significant and continuing opportunity for the entire company.

An August test date has been set for ACM/Sugarloaf's first foray with Alphabet Eurps in its claw-like amusement vending machines. About 260,000 units will move through 10,000 machines, says Eurpsville CEO Michael Kohn.

You think you've got problems? Consider this. That ubiquitous smiley face that's been around forever is probably one of the most, ahem — challenging — properties to protect

FEATURED VIDEO



Mud Pie

[MORE VIDEOS](#)

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Mattel CEO Resigns

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for exactly those reasons. Maybe they shouldn't bother. The SmileyWorld booth is occupied by the French company controlled by Nicholas Loufrani, son of the journalist who trademarked the smileyface icon in 1971. The only thing is, it's generally accepted that the image was originally created in 1963 by a fellow named HaveyBall in Worcester, Mass. Naughty or nice, SmileyWorld asserts the trademark. Only how do you enforce it? For example, does Wal-Mart pay royalties? No, says the young Loufrani, who seems uneasy about making a big deal about it. We wondered why until he mentioned that a lot of his Smiley merchandise is being sold through the world's largest retailer. But Loufrani must be used to such frustration. At least three booths within sight of his were using variations of smiley in their graphics. Oh well, have a nice day!

The folks at Creative Media note that drug chains have emerged as the top retail channel for seasonal merchandise, including toys. That's particularly important for them, especially since they own the licenses for "Santa Claus Is Coming to Town," "Rudolph the Red-Nosed Reindeer" and "The Little Drummer Boy," to name a few. The last is also reflective of a quietly growing but significant "inspirational" market. We saw hints of that elsewhere, too.

Creative's Brad Fazzari also notes the dollar store trend and that his company has been adjusting some offerings to meet that opportunity head on. The challenge, Fazzari says, is being careful not to de-value existing brands or products just by plopping them on the dollar aisle gondolas. So Creative Media, whose focus is on acquiring undermanaged properties, has been working with some licensees to develop channel-appropriate products. It seems only logical but, clearly, it's a logic a lot of suppliers miss.

Speaking of undervalued, Charlie Chaplin is back. After a nearly 20 year absence (remember "Modern Times" helped introduce IBM PCs?) Krypton Imagination is representing the family and will shortly release the Chaplin styleguide. Some interesting and thoughtful stuff.

Entertainment, of course. Sports, for sure. But where was all the marketing to one of the largest demographic groups in the country—the hispanic market? Televisa was there and Bongo Cats were dancing around the show floor (or was that us everytime we heard their salsa beat?). No biggie, but we were a little surprised we didn't see more push at a market still on the front end of its growth.

— Brent Felgner

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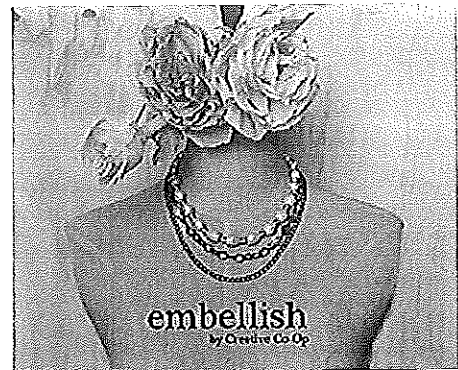
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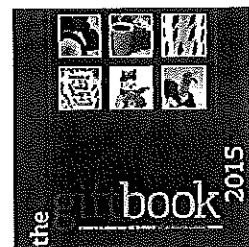
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